IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 582 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JANAKKUMAR RAMANLAL PATEL

Versus

YAGNIK

Appearance:

1. Criminal Appeal No. 582 of 1990

(MR SD PATEL) for Petitioner No. 1

MR MAHENDRA K PATEL for Respondent No. 1-7

PUBLIC PROSECUTOR for Respondent No. 8

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 25/07/2003

ORAL JUDGEMENT

1 This appeal was admitted on 26.7.1990. When the matter came up on 20.6.2003, the following order was

passed :

"It is stated by Mr.M.K.Patel, the learned advocate for respondent Nos. 1 to 7, that the advocate for the appellant Mr.S.D.Patel has passed away.

Office to issue NOTICE to the appellant in these circumstances, returnable on 18-7-2003".

Thereafter on 18/7/2003 as the Court could not take up the matter due to paucity of time the matter was adjourned to 25/7/2003 i.e. today.

2. Fresh notice was issued to the appellant as directed vide order dated 20/6/2003. The office has made an endorsement to the effect that the notice has been received unserved as per report of the Assistant Sub Inspector of Police, Anklav Police Station. It is reported that the appellant is not residing at the given address and as per the statement given by appellant's brother one Shri Prabhubhai Ramanbhai the appellant Janakkumar Ramanlal Patel is residing at Houston, America since last ten years with his family and he is not residing at Anklav. Along with the report of the A.S.I. a copy of the statement dated 1.7.2003 of Prabhubhai Ramanbhai has been placed on record.

3. In the circumstances, in light of the peculiar factual matrix the Court has chosen to decide the appeal on merits, because it is apparent that the appellant, who is the original complainant who had initiated Criminal Case No.330 of 1983 is not interested in prosecuting this appeal.

4. It appears that the complainant was charged with offences under Sections 332, 504 and 506(2) of the Indian Penal Code as per CR.I.No.100/82 in Anklav Police Station. The complainant was produced in connection with the said offence before the J.M.F.C.,Borsad by the Police. The complainant lodged oral complaint with the Magistrate regarding ill treatment at the hands of the police. The J.M.F.C., Borsad has recorded that on 14/12/1982 at around 9.30 p.m. the complainant was picked up near Anklav Panjarapol by the police and taken in police jeep to Anklav Police Station. It is the say of the complainant that in the Jeep-car there were in all six police personnel and P.S.I. Yaghnik caught the hair of the complainant and beat him up. It is also stated that even Jeep-car's driver beat up the complainant and

thereafter behind the closed doors in the police station also the complainant was beaten up. That P.S.I. Yaghnik was delivering kicks, Ranjitsinh was also beating and thereafter Babarbhai Ramanbhai and Shivabhai took away the Wrist watch of the complainant and the complainant lost Rs.600/-, but whether in the police station or outside is not known. The JMFC after recording the aforesaid statement conducted physical examination and sent him to government dispensary. Thereafter order to issue summons against the accused police personnel under Sections 323, 394, 506(1) and 114 of the I.P.C. was made. The complainant was thereafter examined; brother of the complainant Jagdishbhai Ramanbhai was examined; one Kalpnaben Vrajlal Chudgar and Prabhatsing Sahebsing and Ravjibhai Somabhai were also examined. Thereafter, chargesheet was read out to the accused and the accused persons having specifically denied to have committed the offence the trial was conducted.

5 The Trial Court has framed the following three issues :

[1] Does the prosecution prove beyond doubt that accused nos. 1 to 7 caught hold of the complainant Janakkumar Ramanbhai on 14.12.1992 at around 9.00 p.m. and beat him up and threatened to further beat him up and acted in aid of one another under Sections 323, 506(1) & 114 and thus committed the said offence ?

[2] Does the prosecution prove beyond doubt that accused nos. 2 to 7 forcibly removed the Wrist watch of the complainant and committed offence under Section 394 of the I.P.C ?

[3] What order ?

6 The Trial Court answered issue nos. 1 and 2 in the Negative and issue no.3 as per final order.

7 The Trial Court has recorded that the complainant was examined vide Exhibit 51, Jagdishbhai Ramanbhai at Exhibit 54, Dr. Kalpnaben Vrajlal Chudgar at Exhibit 67, Prabhatsing Sahebsing at Exhibit 80 and Ravjibhai Somabhai at Exhibit 85. The Trial Court has recorded that the complainant's complaint/statement was recorded by JMFC on 15.12.1982 and thereafter his brother was examined after issuing summons on 16/12/1982. After recording the statement on 15/12/1982 the JMFC has also recorded that the complainant was physically examined and there are no marks of beating on the right cheek,

rearside of the left leg's thigh shows contusion and on the back on left hand side in the center there is a small contusion. The soles of both the feet are clear and no injury is seen. That there are no other injuries on the body of the complainant. The JMFC sent the complainant for physical examination before Medical Officer.

8 The Trial Court has recorded that Jagdishbhai Ramanlal, brother of the complainant has stated in his deposition that he was not present at the time of the incident and he came to know about it subsequently. It is further stated by the said deponent that he has not seen the accused beating complainant Janakkumar and also that there is no eye witness to the incident.

9 The complainant - Jankakumar has stated in his deposition that when he was being beaten up in the police station his brother Jagdish Ramanbhai had come and he had also seen the accused beating up the complainant. However, in deposition Exhibit 54 - Jagdishbhai Ramanbhai has categorically stated that accused have not beaten up the complainant in his presence. The Trial Court has therefore taken into consideration the contradiction between the depositions of the complainant and his brother Jagdishbhai Ramanbhai.

10 In relation to forcibly snatching away the Wrist watch of the complainant, Jagdishbhai Ramanbhai in his deposition states that the said Wrist watch was returned to him by one Arvindbhai Ravjibhai who is resident of Anklav. The Trial Court has further recorded that when the police picked up the complaint, 700 to 800 persons were present because shooting of movie film was going on and, hence, so many persons had gathered at that place. The say of the complainant is that the police caught hold of the complainant and started beating him in presence of crowd and took him to the police station and were continuously beating the complainant. The Trial Court has recorded that the prosecution has not examined any witness in this regard and if such an incident had happened in presence of the crowd of 700 to 800 persons from which some persons would be residents of the same village Anklav, prosecution would have been able to bring forward atleast few persons in support of the prosecution case.

11 The complainant has complained about having been beaten up and it is further stated that the police have drawn up a wrong/incorrect panchnama in relation to CR No.100/82. The panchnama is produced at Exhibit 85. The said panchnama records that there are no injury marks on

the body of the complainant, while when JMFC examined the complainant some injury marks have been found on the body. That the doctor has been examined at Exhibit 67 and the certificate of medical examination is exhibited at Exhibit 68. It is thus say of the complainant that the panchnama at Exhibit 85 is false and as certified by Medical Officer there are contusions on the body of the complainant. The Trial Court has in relation to the aforesaid submissions on behalf of the complainant referred to Exhibit 68 the injury certificate which records the injuries as noticed by the JMFC before sending the complainant to Medical Officer. The Medical Officer who has been examined at Exhibit 67 states that the injuries on the back and thigh of the left leg could be caused due to some other object or even lathi and might result in pain. The doctor has further deposed that it is difficult to state with certainty as to when the injuries took place because contusions would appear after (within) about three hours of the injuries and would remain for about 4 to 5 days. In the cross-examination it has been deposed that the knee or the shoulder joint are such parts of the body where the bone is absolutely near the skin and if the person is beaten with a blunt object on the said joint the injury would be caused and would appear quickly. So far as the pain in the head is concerned, it could be if the hair is caught (pulled) violently or it can also be that person is feeling pain and it may not be possible to state with certainty that pain is due to some injury, if the injury is not visible. A person can feign pain in head. In context of this certificate and the deposition the Trial Court has found that the contention on behalf of the complainant that the police had drawn up false panchnama would not be acceptable as it is not proved and as could be seen from the statement of the complainant there was a crowd at the site watching film shooting and the Javans of Homeguards had lathi charged the crowd so as to keep the crowd away. Therefore, there is possibility that the complainant might have received one or two blows of lathi in this melee. The Trial Court has further found that if the police and the homeguards had resorted to lathicharge to disperse the crowd that could not be the basis to hold that the police had beaten up the complainant.

12 As regards the statement of the complainant that even the driver of the jeep was beating the complainant the Trial Court has recorded that it is not possible to believe the said version because a person cannot drive the vehicle and at the same time keep on beating another person. The Trial Court has also taken cognizance of the fact that initially the complainant had named ten persons

as accused and subsequently deleted three names which would go to show that the complainant is not sure as to who were the persons who beat up the complainant even if it could be accepted that the complainant was beaten.

13 The Trial Court has further taken into consideration the fact that in Criminal Case Nos.2825/87 and 2826/87 the complainant has been declared to be a hostile prosecution witness and certified copies of such statements and Court's order is available on record of the present proceedings. In the circumstances, the Trial Court has held that the deposition of such a person will have to be treated with extreme caution and in absence of any corroborative evidence from an independent witness, certificate as to the nature of injuries, deposition of the Medical Officer, it is not possible to accept the version of the complainant.

14 Therefore, in light of the aforesaid findings recorded by the Trial Court and considering the facts and circumstances of the case the Trial Court has held that the depositions of the complainant and his brother Jagdishbhai cannot be relied upon because even in case of Jagdishbhai as per record produced he is found to be a person habituated to make a false statement. That the person who is stated to have handed over the wrist watch to Jagdishbhai has also not been examined. Thus, the Trial Court concludes that in the circumstances the accused cannot be held to be guilty and punishable for the offence charged with on the basis of the deposition of the complainant as well as the evidence on record. In the circumstances, the Trial Court has answered both the issues in Negative and ultimately ordered acquittal of the accused under Section 248(1) of the Code of Criminal Procedure.

15 Having gone through all the grounds of appeal raised in the present appeal it is apparent that no case is made out by the appellant-complainant to interfere with the findings recorded by the Trial Court. Even if on the same set of facts and circumstances of the case a different view may be possible, it is settled legal position that where two views are possible a person should not be convicted and the Court must be hesitant in overturning an acquittal.

16 There is one more aspect of the matter. As already stated hereinbefore the complaint is made in 1983. Judgment of the Trial Court was delivered on 15/2/1988 and the Appeal was filed in 1990 which was admittedly belated. However, the delay was condoned and

the appeal was admitted in July,1990. The appellant-complainant is residing outside India with his family since more than ten years, as has come on record and in the circumstances it is apparent that he is not inclined to proceed with the prosecution of the appeal.

17 Hence, in light of what is stated hereinbefore and for the reasons and the findings recorded by the Trial Court this appeal against the order of acquittal dated 15/2/1988 is dismissed.

(D.A.Mehta, J)

m.m.bhatt